

ORDER BELOW EXH.13

- 1] This is third bail application filed by the accused u/s. 439 of Code of Criminal Procedure.
- 2] The prosecution has filed say and opposed this bail application. The informant has filed say and resisted this application.
- 3] Heard Ld. Advocate for the accused and Spl.P.P. for the State. Perused application, say filed by the prosecution and the Charge-sheet.
- 4] It is argued by Ld. Advocate for the accused that statements recorded under Section 164 of Cr.P.C. now opened. There is different story narrated to the doctor. There is no prima facie case to attract offences punishable under Section 376 of I.P.C. and Section 6 of the POCSO Act. Pre-trial imprisonment is not justifiable. Objection to this application is in the same handwriting. There are contradictory statements on record. Hence, prayed for allowing the application.
- 5] Ld. Spl.P.P. has submitted that there is no change in circumstances and therefore, this application is not maintainable. The nature of the offence is serious. The accused dragged the victim backside of the house and committed an offence and immediately second day, report has been lodged. Hence, prayed for rejection of the application.
- 6] It is the case of the prosecution that on 05.11.2021 at

around 11.30 p.m. the accused forcibly took the victim at the back side of her house by holding her hand and he has repeatedly forcibly established non consensual sexual intercourse with the victim.

7] The informant is paternal aunt of the victim. On 05.11.2021 brother of the victim informed her that the victim was not in the house. Thereafter, they searched the victim. She did not find. She gave phone call to the victim but the victim did not pick her phone. Therefore, the informant gave phone call to father of the victim. Then the informant found the victim and she was frightened and was coming from back side of the house. She informed her that the accused took her forcibly at the back side of the house and he had given her threats to kill and forcibly established non consensual sexual intercourse with her.

8] Statement of the victim discloses that she has reiterated the incident. The victim is 15 years old. Her birth certificate is on record. History narrated by the victim to the doctor discloses that the victim and the accused are neighbours and they were talking with each other through Instagram since last 7 days before the incident. The accused called the victim to meet him near the house on relevant day, where the accused started kissing, hugging to the victim to whom the victim was tried to resist. The accused had non consensual penetrative unprotected vaginal intercourse with the victim.

9] Statement of the victim recorded under Section 164 of Cr.P.C. discloses that the victim got acquainted with the accused and

he was sending messages on Instagram to her and she was also sending messages to him. On the day of incident, the accused at around 11.00 p.m. to 11.15 p.m. gave message to the victim and called her to meet him outside the house and he called the victim to follow him and he took the victim at the backside of her house where by removing her clothes, he established physical relations with her. She received phone call from her paternal aunt. She went home and upon asking her whereabouts by paternal aunt, she did not tell anything. Second day her parents came and she disclosed the incident committed by the accused with her to her parents. Statement of paternal aunt of the victim recorded under Section 164 of Cr.P.C. also discloses that second day, when parents of the victim came, the victim disclosed them about the incident committed by the accused.

10] Prima facie history narrated by the victim to the doctor on 07.11.2021 and report supports the prosecution case. It appears that statement of the victim recorded under Section 164 of Cr.P.C. stated specifically regarding physical relations established by the accused with her by calling her outside the house and he took the victim at the backside of the house, though initially she said 'No' to him for following him at the backside of the house. Thus, it is not the change in circumstances. Further, basically minor's consent is immaterial. Acquaintance of 7 days only and by calling the victim outside the house at such time and in spite she said 'No' compelling her to follow him, itself discloses conduct of the accused. Further, FSL report has not received. Thus, there is no substance in the submissions of Ld. Advocate for the accused regarding change in circumstances for

considering this bail application of the accused. Therefore, application is to be rejected. With this, I proceed to pass the following order:

ORDER

- 1] The application is rejected.
- 2] Bail application stands disposed of accordingly.

Pune.
Date – 29/09/2022.

(S.P. Ponkshe)
Addl. Sessions Judge, Pune.

“ I affirm that the contents of the P.D.F. File Judgment are same word for word as per original judgment.

Name of Steno	- Sau.S.V.Thakar (Steno G-1)
Court Name	- Smt. S. P. Ponkshe, Addl.Sessions Judge,Pune.
Date of Order	- 29.09.2022
Order dictated on	- 29.09.2022
Order transcribed on	- 29.09.2022
Order signed by P.O.	- 30.09.2022
Uploaded on	- 30.09.2022